

MAY 10 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT-----X
JOHN W. KAMMIN, individually,

Plaintiff,

v.

SMARTPROS, LTD., a Delaware corporation,

Defendant.
-----X

07CV2665

Ct JUDGE GUZMAN
MAG. JUDGE BROWNJURY TRIAL DEMANDED**COMPLAINT**

Plaintiff John W. Kammin ("Kammin"), by and through his attorneys, ASHMAN LAW OFFICES, LLC, for his Complaint against Defendant SmartPros, Ltd. ("SmartPros"), a Delaware corporation, alleges, upon knowledge as to himself and his own acts and otherwise upon information and belief, as follows:

Introduction

1. This action concerns SmartPros willful infringement of Kammin's copyright in the work entitled, "Preventing Identity Theft – The Thief's Perspective," in violation of the federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and the common and statutory law of the State of New York.

Parties

2. Kammin is an individual citizen of the State of New York.

3. SmartPros is a Delaware corporation licensed to do and doing business in the State of Illinois, with its principle place of business located at 12 Skyline Drive, Hawthorne, New York 10532.

Jurisdiction and Venue

4. Jurisdiction is proper before this Court pursuant to 28 U.S.C. §1338, as this case arises under the federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and pursuant to 28 U.S.C. § 1367 for supplemental jurisdiction. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a), as SmartPros is licensed to do business in Illinois and the venue provision applicable to Copyright claims is coextensive with the scope of personal jurisdiction.

Allegations Common to All Counts

5. Kammin is an expert in identifying and preventing identity theft. In October 2005, Kammin recorded a video interview with Jeff Jacobs ("Jacobs"), who is, on information and belief, a producer employed by and agent of SmartPros, entitled "Preventing Identity Theft – The Thief's Perspective" (the "Work"). In the interview, Kammin, a former identity thief who has since reformed and paid his debt to society, shares his unique perspective on how businesses and individuals can better prevent falling prey to identity theft. The video and audio, as well as any written transcription of the substance of the Work, constitute an original work authored by Kammin.

6. While not his primary occupation, Kammin does derive financial benefit from sharing his perspective on the topic of identity theft and how it can best be prevented. In the hopes that a one-time broadcast of the interview with Jacobs would lead to future paid engagements, Kammin agreed to allow SmartPros to broadcast the Work on a one-time basis over the Internet. The parties further agreed that this was the sole broadcast, sale, or other use SmartPros would make of the Work.

7. Soon thereafter, Kammin discovered that, despite his agreement with SmartPros, SmartPros was in fact offering copies of the Work for sale via the Internet at <http://www.smartpros.com>, in the form of two DVDs and a text course featuring all or portions of the Work (item nos. FMN552 and CPAR531). Initially, Kammin attempted to negotiate a licensing agreement whereby Kammin would allow SmartPros to continue selling the Work in exchange for

Kammin receiving a portion of the profits from any sale. However, negotiations on such an agreement fell through, culminating with a May 18, 2006 letter from Kammin to SmartPros requesting an accounting of all sales of the courses incorporating the Work and royalties therefrom, and demanding that SmartPros cease and desist in the sale of any portion of the Work in any form. A copy of the May 18, 2006 letter is attached hereto as Exhibit A.

8. Kammin made one final attempt to reach agreement with SmartPros, but again, the parties could not come to terms. In the intervening time, Kammin registered the Work with the United States Copyright Office on June 22, 2006. A copy of the Certificate of Registration is attached hereto as Exhibit B. Also on June 22, 2006, Kammin sent another letter to SmartPros advising it of his unwillingness to accept SmartPros latest offer, apprising SmartPros of the registration of the Work, and again demanding that SmartPros cease and desist in the sale and distribution of the Work in any form. A copy of the June 22, 2006 letter is attached hereto as Exhibit C. On June 23, 2006, SmartPros president, Jack Fingerhut, acknowledged Kammin's request via e-mail and agreed to comply with Kammin's requests and cease distributing the Work. A copy of the June 23, 2006 e-mail is attached hereto as Exhibit D.

9. Despite these repeated demands, and despite SmartPros knowledge that Kammin held the copyright to the Work, SmartPros continued to distribute the Work for profit. On January 19, 2007, an investigator hired by Kammin purchased a copy of an online course offered by SmartPros (#CPAR531), featuring portions of the Work. A copy of the web page offering the course for sale and the receipt confirming the purchase is attached hereto as Exhibit E.

10. On information and belief, SmartPros has sold additional copies of the Work to other individuals or entities. The number of these sales is currently unknown to Kammin, but will be determined through discovery.

COUNT I

(Copyright Infringement - 17 U.S.C. §501)

11. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

12. Kammin is the sole author of and owner of the copyright in the Work.

13. The Work was registered by Kammin with the United States Copyright Office on June 22, 2006.

14. On January 19, 2007, SmartPros, without the authorization of Kammin, and in violation of Kammin's rights as the owner of the copyright in the Work and his repeated demands that SmartPros cease the reproduction and sale of the Work, sold a copy of the Work for the \$59.98, constituting a willful infringement of Kammin's copyright. Upon information and belief, SmartPros has made numerous other unauthorized sales of the Work.

WHEREFORE, Kammin respectfully requests that this Court enter an Order: (i) awarding statutory damages for willful infringement of copyright pursuant to 17 U.S.C. §504(c) in the amount of \$150,000 per infringement; (ii) awarding attorney fees and costs in full; and (iii) enter an injunction prohibiting Smartpros from making any further use of the Work, including but not limited to the reproduction, distribution, sale, or offering for sale thereof.

COUNT II

(Breach of Contract)

15. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

16. In October 2005, Kammin and SmartPros entered into an agreement by which Kammin would convey a limited license to SmartPros to broadcast the Work to its subscribers over the Internet on a one-time basis. In return, Kammin would benefit from the publicity afforded by the broadcast but retain all future rights in the Work.

17. SmartPros subsequently breached the agreement on multiple occasions by offering the Work for sale.

18. Kammin has performed fully under the agreement and is not in breach thereof.

WHEREFORE, Kammin respectfully requests that this Court enter judgment in Kammin's favor and against SmartPros in an amount to be determined at trial.

COUNT III

(Unjust Enrichment)

19. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

20. SmartPros has engaged in unauthorized sale of the Work with no compensation to Kammin, the owner of the Work's copyright. As such, SmartPros has received a benefit from the sale of the Work that rightfully should accrue to Kammin.

21. It would be inequitable to allow SmartPros to retain the profits from the sale of the Work.

WHEREFORE, Kammin respectfully requests that this Court enter judgment in Kammin's favor and against SmartPros in an amount to be determined at trial.

COUNT IV

(Violation of New York Civil Rights Law §§50-51)

22. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

23. SmartPros, through its unauthorized distribution of the Work, utilized Kammin's name, likeness, and photographic depiction in the course of advertising and/or trade.

24. Kammin did not, at any time, consent in writing to the use of his name, likeness, and photographic depiction by SmartPros for any purpose whatsoever.

WHEREFORE, Kammin respectfully requests that this Court enter judgment in Kammin's favor and against SmartPros in an amount to be determined at trial and for an award of exemplary damages.

COUNT V

(Unfair Business Practices -- New York)

25. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

26. By selling unauthorized copies of the Work without any compensation to Kammin, SmartPros has misappropriated Kammin's skills, expenditures and labors for its own gain.

27. In short, SmartPros has misappropriated any commercial advantage Kammin could have gained from the Work.

WHEREFORE, Kammin respectfully requests that this Court enter judgment in Kammin's favor and against SmartPros in an amount to be determined at trial and for an award of punitive damages, attorney's fees and costs.

COUNT VI

(Tortious Interference With a Prospective Economic Advantage)

28. Kammin incorporates paragraphs 1 through 10 of the Complaint as if fully stated herein.

29. By selling unauthorized copies of the Work, SmartPros has prevented Kammin from engaging in his own activities to profit from the Work, or from other related activities, such as other works or speaking engagements similar to the Work in their content.

30. These activities of SmartPros constitute an interference with, and injury to, a prospective business relationship between Kammin and potential consumers of the Work or similar works produced or performed by Kammin.

WHEREFORE, Kammin respectfully requests that this Court enter judgment in Kammin's favor and against SmartPros in an amount to be determined at trial and for an award of punitive damages, attorney's fees and costs.

JURY DEMAND

Plaintiff requests a jury for all matters triable at law.

Dated: Chicago, Illinois
May 10, 2007

JOHN KAMMIN,

By: 

One of his Attorneys

Kenneth J. Ashman
Neal D. Kitterlin
ASHMAN LAW OFFICES, LLC
55 West Monroe Street, Suite 2650
Chicago, Illinois 60601
(312) 596-1700 (ph)

EXHIBIT A

EXHIBIT A

520 West 43rd Street
Apartment 31K
New York, NY 10036

May 18, 2006

Mr. Allen S. Green, CEO
Mr. Jack Fingerhut, President
SmartPros Ltd
12 Skyline Drive
Hawthorne, NY 10532

VIA FACSIMILE TO (914) 345-2603

Dear Sirs:

I am writing to follow up on my phone call of yesterday afternoon asking your office to contact me as soon as possible. The purpose of my call was to bring to your attention the fact that your company is currently selling two DVDs and a text course featuring an interview I recorded with your producer, Jeff Jacobs, in October 2005. The courses, FMN552 and CPAR531, contain material which is protected by federal copyright statute.

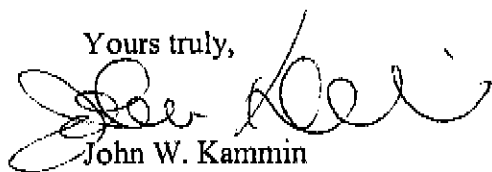
Please be informed that my agreement with your company regarding the use of my image and interview specifically stated that your DVD was to be released to your subscribers only on a one time basis and was not to be sold via the internet or for profit. Despite numerous promises made by Mr. Jacobs to either remove the courses from distribution or execute a royalty agreement providing me with an accounting of sales and appropriate payment, no action has been taken by your company and the sale of the material in question has now continued for six months.

Over one month ago my attorney spoke directly with Mr. Jacobs and was promised that the contract in question would be executed by your company. The contract was prepared by my attorney and received by Mr. Jacobs in early April. No further contact has been received from your office.

Having spoken at length with numerous attorneys regarding this situation, I am of the opinion that your unauthorized sale of the course in question constitutes a violation of both federal and states statutes. In an attempt to resolve this matter with a minimum amount of expense and litigation, I have elected to make one further attempt to settle this matter amicably. Please immediately provide me with an accounting of all sales of the courses in question and your payment for all royalties due to date in accordance with the contract provided to Mr. Jacobs last month. Furthermore, unless your office intends to provide ongoing royalty payments and accountings for the courses in question, you are hereby instructed to cease and desist in the sale and distribution of my image and material through your website or by any other means in both DVD and text format.

You may contact me at 917-319-2124 or by facsimile at 212-947-9657 to discuss this matter at your earliest convenience.

Yours truly,

A handwritten signature in black ink, appearing to read "John W. Kammin", written over the printed name.

John W. Kammin

EXHIBIT B

EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Short Form TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TXu 1-310-196



Effective Date of Registration

June 22, 2006

Application Received

JUN 22 2006

Deposit Received

JUN 22 2006 Two

Fee Received

Examined By

[Signature]

Correspondence

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Title of This Work:

1

Preventing Identity Theft
- The Thief's Perspective

Alternative title or title of larger work in which this work was published:

Name and Address of Author and Owner of the Copyright:

2

JOHN W KAMMIN
520 W 43rd St Apt 31K
New York, NY 10036

Nationality or domicile:
Phone, fax, and email:

Phone (212) 947 5078 Fax (212) 947 9657
Email Jay Kay 5131@hotmail.com

Year of Creation:

3

2005

If work has been published,
Date and Nation of Publication:

4

a. Date NO authorized publication (Month, day, and year all required)
b. Nation

Type of Authorship
in This Work:

5

☒ Text (includes fiction, nonfiction, poetry, computer programs, etc.)
☐ Illustrations
☐ Photographs
☐ Compilation of terms or data

Check all that this author created.

Signature:

6

Registration cannot be completed without a signature.

I certify that the statements made by me in this application are correct to the best of my knowledge.* Check one:

☒ Author ☐ Authorized agent

[Signature]

Name and Address of Person to Contact for Rights and Permissions:

7

Phone, fax, and email:

☒ Check here if same as #2 above.

Phone ()
Email

Fax ()

8

Certificate will be mailed in window envelope to this address:

Name *John W KAMMIN*
Number/Street/Apt *520 W 43rd St 31K*
City/State/ZIP *New York NY 10036-4356*

Complete this space only if you currently hold a Deposit Account in the Copyright Office.

9

Deposit Account #

Name

DO NOT WRITE HERE

Page 1 of 1 pages

*17 U.S.C. § 508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

EXHIBIT C

EXHIBIT C

520 West 43rd Street
Apartment 31K
New York, NY 10036

June 22, 2006

Mr. Jack Fingerhut, President
SmartPros Ltd.
12 Skyline Drive
Hawthorne, NY 10532

VIA CERTIFIED MAIL/EMAIL AND FACSIMILE TO (914) 345-2603

Dear Mr. Fingerhut:

I am writing to follow up on our telephone conversations and other correspondence of earlier this month in which we attempted to negotiate a settlement of our disagreement regarding your company's ongoing sale and distribution of courses FMN552 and CPAR531, entitled Preventing Identity Theft: The Thief's Perspective. As you are aware, the courses in question feature material protected by federal and state statutes.

When we last spoke, you had offered to create a website for me to use to promote my lectures and host the site for one year. It is my assumption that SmartPros Ltd. would expect me to waive any rights to payment of royalties that I might have under law in return for the creation and hosting of the site. As I stated to you in my email of June 1st, 2006, it was my expectation that SmartPros Ltd. would also support the site via payment for key word advertising on the internet and promotion to your client base. I also stated that I would want SmartPros Ltd. to enter into a legally binding contract to pay sales and royalties to me for any products or lecture appearances that occurred after the site was online. Unfortunately, in our last discussion, you indicated to me that SmartPros was unwilling to go any further than the creation of the site and hosting of same for a one year period.

In light of the above facts, I regret to inform you that after careful consideration of this situation, I must reject your offer as you have proposed it. I find it completely inequitable that I should allow SmartPros Ltd. the right to sell and distribute my material and image for profit, in return for what I can only categorize as a token gesture on your part.

As you stated during one of our conversations, SmartPros Ltd is simply not willing to enter into a contractual agreement which requires you to account for all sales and related royalties associated with the use of my materials, inclusive of both individual and compilation works. Given your position, I simply can not see any way in which we can come to an amicable agreement that would allow SmartPros, Ltd the right to continue the sale and distribution of my materials.

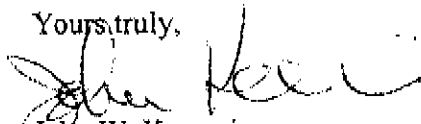
Given the previously stated facts, I have decided that it is my best course of action to demand that SmartPros Ltd cease and desist in the sale and distribution of the course material in question immediately upon receipt of this correspondence. This demand applies to all materials featuring my image, text or ideas in both individual and compilation format.

Please note that given our inability to come to terms regarding this matter, on June 21st, 2006, I sent a copy of the material featuring my text, image and ideas as shown in FMN552 and CPAR531 to the United States Library of Congress, Copyright Office in Washington, D.C., via Federal Express delivery. The material in question was received by the Copyright Office on June 22nd, 2006 at 11:42AM. I am attaching proof of delivery of this material by the U.S. Government for your review. Please note that the laws of the United States dictate that copyright protection for protected works attaches immediately upon receipt of those materials by the government.

Therefore, upon receipt of this correspondence, your office shall immediately remove the materials in question from your website and cease and desist in the sale and distribution of those materials in both individual and compilation formats. Should any sale of the material in question occur after receipt of this letter, I shall have no choice but to demand damages in accordance with federal copyright statute for each violation.

Finally, please note that this correspondence supersedes and renders void any prior authority, whether written or implied, for SmartPros Ltd. to sell or distribute the material in question.

Yours truly,



John W. Kammin

EXHIBIT D

EXHIBIT D



jaykay5131@hotmail.com

Printed: Friday, June 23, 2006 10:32 AM

From : Jay Kay <jaykay5131@hotmail.com>
Sent : Friday, June 23, 2006 10:32 AM
To : Jaykay5131@hotmail.com
Subject : RE: DECISION RE: SALE OF IDENTITY THEFT DVD - CEASE SALE AND DISTRIBUTION IMMEDIATELY

Jack: I am truly sorry that you are disappointed, but after months of this business, I have decided that I simply do not want to deal with SmartPros anymore.

I disagree that I was ever aware that my video would be used in your products. That was the reason this disagreement began in the first place. As I have maintained throughout, my agreement with Mr. Jacobs was that my interview be used one time only as a promotional piece. I was very specific about that with both Mr. Jacobs and Mr. Zeune, who was acting as my agent at that time.

As for giving you the courtesy of a phone call, I did exactly that. I did not copyright the material behind your back and then wait for you to sell it and set my lawyers on you. I informed you of exactly what was going on and have now politely asked you to stop selling and distributing the material. I hardly think it is appropriate to tell me that I did not give you the courtesy of a phone call when calls and emails from myself and my attorneys were ignored by your office for literally months after I protested your use of my material.

To be honest, I simply do not want to have anything more to do with the lecture business and the "Identity Theft Prevention" business at all. As you know, I am no longer on the Pros and the Cons website and simply do not want to be involved in that business at this point in time.

In the end, I am being quite honest with you when I state that it is best to remove the material from distribution. I simply did not feel good about your offer, regardless of the cost to SmartPros. If, as you state, you were going to spend thousands of dollars to create the website then why not simply give me contract I requested six months ago?

Again, I am sorry you are disappointed, but sometimes in business it is best to make a clean break rather than try and deal with people that one is not completely trusting of. Thank you.

John Kammin

From: "Jeff Jacobs" <jeffjacobs@smartpros.com>
To: "Jack Fingerhut" <jackfingerhut@smartpros.com>, "Jay Kay" <jaykay5131@hotmail.com>
CC: "Allen Greene" <allengreene@smartpros.com>, "Joseph Fish" <joe@smartpros.com>, "Greg Sumner" <gregsumner@smartpros.com>, "Karen Stolz" <karenstolz@smartpros.com>
Subject: RE: DECISION RE: SALE OF IDENTITY THEFT DVD - CEASE SALE AND DISTRIBUTION IMMEDIATELY
Date: Fri, 23 Jun 2006 01:57:12 -0400

Jack, Thanks for your perseverance on this matter. Nothing that Kammin does surprises me anymore. Jeff

From: Jack Fingerhut
Sent: Friday, June 23, 2006 12:55 AM
To: Jay Kay
Cc: Allen Greene; Jeff Jacobs; Joseph Fish; Greg Sumner
Subject: RE: DECISION RE: SALE OF IDENTITY THEFT DVD - CEASE SALE AND DISTRIBUTION IMMEDIATELY

John, We will pull the segment as you requested. I am very disappointed that you decided on this action without the courtesy of a phone call. I dealt with you in good faith and put in a great deal of time and effort in order to work this out with you. We were also going to commit thousands of dollars in time and effort to create a web site for you despite the fact that you were aware upfront that your interview would

be used in our products. The only misunderstanding was the individual sale of the interview which only resulted in a couple of hundred dollars of sales. The value of what we were going to do was well in excess of that. I am at a real loss in trying to understand your actions. Regards, Jack Fingerhut (914 517-1121)

From: Jay Kay [mailto:jaykay5131@hotmail.com]
Sent: Thu 6/22/2006 7:09 PM
To: Jack Fingerhut
Subject: DECISION RE: SALE OF IDENTITY THEFT DVD - CEASE SALE AND DISTRIBUTION IMMEDIATELY

Mr Fingerhut: Attached, please find a copy of correspondence which was sent to you today via certified mail and facsimile.

After carefully considering my options and the offers you have made, I regret to inform you that I have decided your suggestions are unacceptable. Please immediately remove my material from your website and cease the sale and distribution of that material in both individual and compilation format.

Please note that the material in question was received by the U.S. Copyright office earlier today and is now protected by federal copyright statute.

I regret we were unable to reach an agreement about your use of my material, but it is obvious to me that SmartPros is unwilling to properly compensate me for the use of my material.

John Kammin

EXHIBIT E

EXHIBIT E

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RECEIPT

RECEIPT:CPEPAD000000039115

Billing Information

Name: David Murphy
Creditcard: *****1020
Product

Purchase Date

Local: Jan 19th, 2007 11:04:24 AM
New York: Jan 19th, 2007 11:05:46 AM

Price

Preventing Identity Theft - The Thief's Perspective \$59.98

TOTAL PAID \$59.98

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Format	Number	Course Title (Subs. Brand)	Expiration Date	Current Credits	Status
<input type="checkbox"/>	CPAR531	CPAR - 2005/October, Seg.E - Preventing Identity Theft - The Thief's Perspective (CPAR)	Jan 23, 2007	2.00	In Progress

(Click ☒ to view detail)

☒ **REMOVE CHECKED COURSES**

Format Key: ☒ eLearning Player ☐ Video ☒ Flash ☒ Text ☐ CD ☒ Book

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CPAR Auditing Practice

☐ CPAR531 Preventing Identity Theft - The Thief's Perspective(APP) ☐ 2.00 Paid LAUNCH

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